

R-2000-58

UNITED STATES PATENT AND TRADEMARK OFFICE MAY 12 2000  
BEFORE THE DIRECTOR  
OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re

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Decision on  
Petition for Regrade  
Under 37 C.F.R. § 10.7(c)

**MEMORANDUM AND ORDER**

(petitioner) petitions for regrading all of the questions for which he did not receive credits on the Registration Examination held on November 3, 1999. The petition is denied to the extent petitioner seeks a passing grade on the Registration Examination.

**BACKGROUND**

An applicant for registration to practice before the United States Patent and Trademark Office (USPTO) in patent cases must achieve a passing grade of 70 in both the morning and afternoon sections of the Registration Examination. Petitioner scored 62. On February 11, 1999, petitioner requested regrading all of the questions for which he did not receive credits.

As indicated in the instructions for requesting regrading of the Examination, in order to expedite a petitioner's appeal rights, all regrade requests have been considered in the first instance by the Director of the USPTO.

**OPINION**

Under 37 C.F.R. § 10.7(c), petitioner must establish any errors that occurred in the grading of the Examination. The directions state: "No points will be awarded for incorrect

answers or unanswered questions.” The burden is on petitioners to show that their chosen answers are the most correct answers.

The directions to the morning and afternoon sections state in part:

Do not assume any additional facts not presented in the questions. When answering each question, unless otherwise stated, assume that you are a registered patent practitioner. Any reference to a practitioner is a reference to a registered patent practitioner. The most correct answer is the policy, practice, and procedure which must, shall, or should be followed in accordance with the U.S. patent statutes, the PTO rules of practice and procedure, the Manual of Patent Examining Procedure (MPEP), and the Patent Cooperation Treaty (PCT) articles and rules, unless modified by a subsequent court decision or a notice in the *Official Gazette*. There is only one most correct answer for each question. Where choices (A) through (D) are correct and choice (E) is “All of the above,” the last choice (E) will be the most correct answer and the only answer which will be accepted. Where two or more choices are correct, the most correct answer is the answer which refers to each and every one of the correct choices. Where a question includes a statement with one or more blanks or ends with a colon, select the answer from the choices given to complete the statement which would make the statement *true*. Unless otherwise explicitly stated, all references to patents or applications are to be understood as being U.S. patents or regular (non-provisional) utility applications for utility inventions only, as opposed to plant or design applications for plant and design inventions. Where the terms “USPTO,” “PTO,” or “Office” are used in this examination, they mean the U.S. Patent and Trademark Office.

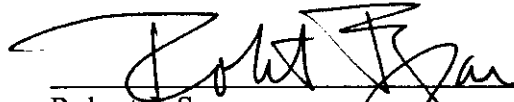
Upon regrading all of the question for which the petitioner did not receive credits, petitioner has been awarded points for morning question 20 and afternoon questions 11, 19, and 29. Each question in the Examination is worth one point. Accordingly, petitioner has been granted an additional four points on the Examination. No error in grading has been shown as to other questions. Petitioner’s request for credit on the other questions is denied because petitioner did not show that his chosen answers are the most correct answers.

**ORDER**

For the reasons given above, four points have been added to petitioner's score on the Examination. Therefore, petitioner's score is adjusted to 66. This score is insufficient to pass the Examination.

Upon consideration of the request for regrade to the Director of the USPTO, it is ORDERED that the request for a passing grade on the Examination is denied.

This is a final agency action.



Robert J. Spar  
Director, Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy